

Order

Entered: October 10, 2003

**Michigan Supreme Court
Lansing, Michigan**

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ADM File No. 2003-50

Proposed Amendment of Rules 3.915,
3.965, 3.975, 3.976, and 3.977
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering a proposal from the Michigan Supreme Court Adoption Work Group to amend Rules 3.915, 3.965, 3.975, 3.976, and 3.977 of the Michigan Court Rules.

The work group, formed in cooperation with the Family Independence Agency, was charged with studying a wide range of issues relating to procedural obstacles to adoption in child-protective proceedings, and to recommend measures to deal with them. In addition to the rule proposals set forth below, the work group also endorsed improved reporting requirements that are being implemented by the State Court Administrative Office and urged cooperation between the courts and the FIA in implementing the Program Improvement Plan that has been submitted to the United States Department of Health and Human Services by FIA. Additional work group recommendations include development of education and training programs, public outreach to promote adoption, and support of appellate-delay-reduction initiatives. The work group's report is available at www.courts.michigan.gov/supremecourt/resources/administrative/index.htm.

Before determining whether the proposed court rule amendments should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals, or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The schedules and agendas for public hearings are posted on the Court's website at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below
by underlining for additions and strikeover for deletions.]

Rule 3.915 Assistance of Attorney

(A) [Unchanged.]

(B) Child Protective Proceedings.

(1) [Unchanged.]

(2) Child.

(a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met with the child, as required by MCL 712A.17d(1)(d).

(C) [Unchanged.]

(D) Duration.

(1) An attorney retained by a party may withdraw only on order of the court.

(2) An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court. The court may permit another attorney to temporarily substitute for the child's lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. Such a substitute attorney must be familiar with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child's lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule.

(E) [Unchanged.]

Rule 3.965 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1) - (12) [Unchanged.]

(13) The court must inquire of the parent, guardian, or legal custodian regarding the identity of relatives of the child who might be available to provide care. If the father of the child has not been identified, the court must inquire of the mother regarding the identity and whereabouts of the father.

(C) - (D) [Unchanged.]

(E) Advice; Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties:

(1) - (4) [Unchanged.]

The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child's best interests, as required by MCL 722.954a(2). In a case to which MCL 712A.18f(6) applies, the court shall require the agency to provide the name and address of the child's attending physician of record or primary care physician.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(A) [Unchanged.]

(B) Notice. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR. 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(C) - (H) [Unchanged.]

Rule 3.976 Permanency Planning Hearings

(A) [Unchanged.]

(B) Time.

(1) - (2) [Unchanged.]

(3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than one year after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing.

(C) Notice. Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(D) [Unchanged.]

(E) Determinations; Permanency Options.

(1) [Unchanged.]

(2) Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings, ~~no later than 42 days after the permanency planning hearing,~~ to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights. The order must specify the time within

which the petition must be filed, which may not be more than 42 days after the date of the order.

(3) [Unchanged.]

Rule 3.977 Termination of Parental Rights

(A) - (B) [Unchanged.]

(C) Notice; Priority.

- (1) Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).
- (2) Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court's caseload.

(D) - (J) [Unchanged.]

Staff Comment: These proposed amendments have been recommended by the Adoption Work Group, which was formed by the Supreme Court in cooperation with the Family Independence Agency. According to the work group, the proposed amendment of MCR 3.915(B) would assist in the enforcement of the statutory requirement that lawyers-guardians ad litem for children meet with their clients before each hearing. The trial court would be required to ask lawyers-guardians ad litem whether they have visited the client before the hearing. The work group believes that this amendment is necessary to address the pervasive failure of lawyers-guardians ad litem to visit their clients between hearings. This failure has been identified as a major barrier to permanency for children because the lawyers-guardians ad litem are unable to provide an accurate assessment of the children's best interests and their wishes regarding their permanency plans. Stakeholders in the state's child welfare system expressed concern that, all too often, lawyers-guardians ad litem were not visiting their clients.

The proposed amendment of MCR 3.915(D) would ensure consistency in representation by discouraging substitution of lawyers-guardians ad litem for children. The rule allows substitution only for good cause or to prevent a hearing from being adjourned. The substituting attorney is required to be familiar with the case, either through independent investigation and preparation, and visitation with the child, or through consultation with the assigned lawyer-guardian ad litem, who has fulfilled the statutory visitation and investigation obligations.

The amendment of MCR 3.965(B) would require the court to ask parents, guardians, or legal custodians to identify relatives who might be available to care for the child. This requirement was recommended because protective services workers who investigate allegations of abuse and remove children from homes were having difficulty convincing parents to cooperate in the identification of suitable relatives. The work group believes that the authority exercised by the courts would convince parents to identify relatives where they had refused to disclose such information to social workers. Likewise, the proposed amendment of MCR 3.965(E) directs courts to order agencies to identify and locate relatives who may be suitable for placement of the child.

Other proposed changes require courts to give child welfare cases priority in scheduling, clarify the applicable time limits for the filing of permanent custody petitions, and require courts to notify interested parties that they may provide input in post-dispositional review hearings, and to allow the parties to submit written information by providing it to an attorney for one of the parties.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2004, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2003-50. Your comments will be posted, along with the comments of others, at www.courts.michigan.gov/supremecourt/resources/administrative/index. The Adoption Work Group's Report also is posted at this site.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 10, 2003

Corbin R. Davis

Clerk